

No. 1-11-0429

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 2986
)	
ELIJAH COOLEY,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE STEELE delivered the judgment of the court.
Justices Murphy and Salone concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant forfeited review of claim that his multiple convictions were imposed in violation of the one-act, one-crime rule where defendant failed to raise the issue below, and also failed to present argument on appeal as to how either of the prongs of the plain error doctrine is satisfied to allow plain error review; the circuit court's judgment is affirmed.

¶ 2 Following a bench trial, defendant Elijah Cooley was convicted of seven counts of robbery, five counts of unlawful restraint, and one count of aggravated battery. He was sentenced to concurrent terms of five years' imprisonment on his robbery convictions and three years' imprisonment on the remaining convictions. On appeal, defendant solely contends that

these multiple convictions violate the one-act, one-crime rule because they are based on the same physical act and, therefore, should merge into one conviction.

¶ 3 The record shows defendant was convicted on evidence showing that in November 2009, Walter and Helen Anderson, who were over the age of 60 years, owned a boarding house at 11925 South Emerald Avenue in Chicago. At 10 p.m. on November 15, 2009, defendant and codefendant Martha Vanzant entered the basement of the boarding house where the Andersons and their resident, Beverly Robinson, were watching television. Robinson and Mr. Anderson recognized defendant and Vanzant as persons previously seen in the neighborhood.

¶ 4 The record further shows that the victims believed defendant was carrying a sawed-off shotgun, which he pointed at Mr. Anderson, and demanded his money. Mr. Anderson told defendant that he did not have any money, and defendant then aimed the gun at all three victims. Robinson told defendant she had no money, and defendant responded by telling everyone to get down. Robinson got down, but Mr. Anderson remained seated on a chair and Mrs. Anderson stayed in her wheelchair. Vanzant then picked up a cookie tin that held Mr. Anderson's petty cash, and left with it. Defendant, however, aimed the gun at Mrs. Anderson, and demanded her purse. She told him not to take it, but he grabbed it and a struggle ensued. Defendant overpowered Mrs. Anderson, and started to leave with her purse; however, Robinson grabbed defendant and the purse dropped to the floor. Defendant then struck Robinson with the gun and left without the purse.

¶ 5 On appeal, defendant solely challenges the multiple convictions entered by the court. He maintains that his seven robbery convictions and five unlawful restraint convictions violate the one-act, one-crime rule announced in *People v. King*, 66 Ill. 2d 551, 566 (1977), because they are

all based on the same physical act, and therefore should be merged into one robbery conviction. The State initially responds that defendant has forfeited this issue for review because he failed to raise it at sentencing or in his postsentencing motion.

¶ 6 In order to preserve an issue for review, defendant must object at trial and raise the matter in a written posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988); *People v. Reed*, 177 Ill. 2d 389, 393 (1997). Here, defendant did not do either, and thus, clearly failed to properly preserve for review the issue presented in this court. *People v. Bui*, 381 Ill. App. 3d 397, 426 (2008).

¶ 7 As a consequence, "we may review this claim of error only if *defendant has established* plain error." (Emphasis added.) *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). To do so, defendant must first show that a clear or obvious error occurred; and then, in this sentencing context, defendant must show either that the evidence at the sentencing hearing was closely balanced or the error was so egregious as to deny defendant a fair sentencing hearing. *Hillier*, 237 Ill. 2d at 545. When defendant fails to meet his burden, the procedural default will be honored. *Id.*

¶ 8 In his reply brief, defendant claims in a single sentence that this court may review his claim under plain error because a violation of the one-act, one-crime rule affects his substantial rights. As authority, defendant cites *People v. Smith*, 183 Ill. 2d 425, 430 (1998), where the supreme court addressed a forfeited sentencing claim on that basis. *Smith* relied on *People v. Davis*, 156 Ill. 2d 149 (1993), and *People v. Hicks*, 181 Ill. 2d 541 (1998). In *Davis*, the supreme court held that defendant had forfeited the issue of improper multiple convictions, but vacated the lesser included conviction pursuant to its supervisory authority. *Davis*, 156 Ill. 2d at 159-60.

In *Hicks*, the supreme court addressed the multiple convictions issue, stating that although the issue was waived, waiver served as a limitation on the parties, not the court. *Hicks*, 181 Ill. 2d at 545.

¶ 9 Since then, however, the supreme court has held that the two most important functions of the appellate court are to ascertain if it has jurisdiction and determine which issues have been forfeited. *People v. Smith*, 228 Ill. 2d 95, 106 (2008). The supreme court has urged judicial restraint (*People v. White*, 2011 IL 109689, ¶ 153), and held that defendant forfeits plain error review where he fails to present argument on how either of the two prongs of the plain error doctrine is satisfied (*Hillier*, 237 Ill. 2d at 545-46 (appellate court should not reach the merits of a waived issue if defendant has not argued for plain error review); *People v. Nieves*, 192 Ill. 2d 487, 503 (2000) (simply asking for plain error review because the issue allegedly involves a fundamental right is insufficient; defendant must argue that the evidence is closely balanced and explain why the error is so severe that it must be remedied to preserve the integrity of the judicial process)). Thus, the mere assertion that the alleged sentencing error affected defendant's substantial rights is insufficient to warrant plain error review. See, e.g., *People v. McDade*, 345 Ill. App. 3d 912, 914 (2004); *People v. Rathbone*, 345 Ill. App. 3d 305, 311 (2003).

¶ 10 In this case, defendant failed to make the required showing. We therefore conclude that he has forfeited plain error review of the sentencing issue raised.

¶ 11 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 12 Affirmed.